

# Exhibit 1

CIVIL  
CASE SUMMARY

CASE NO. 3659

Bigfoot Energy Services, LLC vs.Diamond Construction,  
Inc.§ Location: County Court at Law  
§ Judicial Officer: McPherson, Rick  
§ Filed on: 12/01/2023

## CASE INFORMATION

Case Type: Civil Case - Other

Case 12/01/2023 Filed  
Status:

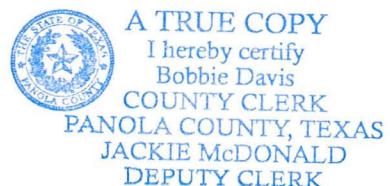
## PARTY INFORMATION

Plaintiff	Bigfoot Energy Services, LLC	Attorneys O'Conor, Robert D Retained 713-647-7511(W)
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Defendant	Diamond Construction, Inc.
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DATE	EVENTS & ORDERS OF THE COURT
12/01/2023	Certified Mail-Unexecuted
12/01/2023	Original Petition (OCA) <i>Plaintiff's Original Petition for Declaratory Judgment and Fraud</i>
12/06/2023	REQUEST <i>for Citation</i>
12/07/2023	Certified Mail-Executed
12/14/2023	<b>Citation</b> Diamond Construction, Inc. Served: 12/12/2023
01/04/2024	REQUEST <i>for Certified Copies</i>

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Diamond Construction, Inc.
	Total Charges 37.00
	Total Payments and Credits 37.00
	<b>Balance Due as of 01/04/2024</b> 0.00
	 <b>Plaintiff</b> Bigfoot Energy Services, LLC
	Total Charges 494.00
	Total Payments and Credits 494.00
	<b>Balance Due as of 01/04/2024</b> 0.00



3659

CAUSE NO. \_\_\_\_\_

<b>BIGFOOT ENERGY SERVICES, LLC,</b>	§	<b>IN THE COUNTY COURT</b>
	§	
Plaintiff,	§	
	§	
V.	§	<b>AT LAW</b>
	§	
<b>DIAMOND CONSTRUCTION, INC.,</b>	§	
	§	
Defendant.	§	<b>PANOLA COUNTY, TEXAS</b>
	§	

**PLAINTIFF'S ORIGINAL PETITION  
FOR DECLARATORY JUDGMENT AND FRAUD**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Bigfoot Energy Services, LLC, ("Plaintiff" or "Bigfoot") files this Plaintiff's Original Petition for Declaratory Judgment and Fraud ("Petition") against Diamond Construction, Inc. ("Defendant" or "Diamond") (Plaintiff and Defendant collectively, the "Parties"), and would respectfully show the Court the following:

**I. Summary of This Lawsuit**

1. A real dispute exists about whether Defendant should have engaged in repairs to a trailer in the amount of \$45,999.99 (tax included), or whether the trailer should've been rendered a total loss; as such, Plaintiff files this Declaratory Judgment action. Plaintiff asserts that Defendant never should have performed repairs to Plaintiff's trailer because the trailer should have been rendered a total loss. However, Defendant failed to render the trailer a total loss and decided to repair it to reap a benefit of \$42,563.03 (labor and materials). This lawsuit has been filed to ask this Court to determine whether the Defendant performed unnecessary services to benefit itself at the expense of Plaintiff, and to hold Defendant accountable for its fraud.



A TRUE COPY  
I hereby certify  
Bobbie Davis  
COUNTY CLERK  
PANOLA COUNTY, TEXAS  
JACKIE McDONALD  
DEPUTY CLERK

## II. Discovery Control Plan

2. Plaintiff pleads that discovery should be conducted under Level 1, TEX. R. CIV. P. 190.4 and in accordance with a discovery control plan tailored to the circumstances in this suit.

## III. Parties and Service

3. Plaintiff Bigfoot Energy Services, LLC, is a Texas Limited Liability Company with its principal office located in Carthage, Panola County, Texas.

4. Defendant Diamond Construction, Inc., is a Louisiana business corporation, and may be served with process through its registered agent, Robert S. Haynes, 27687 Highway 157, Shongaloo, Louisiana 71072, or wherever he may be found.

## IV. Venue and Jurisdiction

5. This is a suit for declaratory relief, pursuant to the Texas Declaratory Judgment Act ("TDJA"), and fraud concerning an invoice for payment for alleged repair services on a trailer. Venue is proper in Panola County, Texas the Parties' performance concerning these services took place, in whole or in part, in this County.

6. The damages and relief sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of less than \$65,000, inclusive of attorneys' fees.

7. This Court has personal jurisdiction over Defendant because Defendant conducted business in Panola County with a Panola County-based company; Defendant solicited Plaintiff's business in Panola County, Texas; and Defendant committed fraud in Panola County, Texas by submitting an invoice for payment to Plaintiff in this County for services that never should have been performed.

## V. Factual Background

8. As noted in the summary above, this declaratory judgment and fraud action concerns the Parties' dispute about welding and repair services Defendant allegedly made to a

trailer owned by Plaintiff.

9. On July 12, 2023, Defendant submitted Invoice No. 114301 to Bigfoot at its place of business located at 932 South Shelby Road, Carthage, Texas 75633, for repair services allegedly performed on a trailer owned by Plaintiff. The invoice described 261 hours of work, and a total bill of \$45,999.99. See Exhibit 1, attached hereto, the invoice in question.

10. The repair work on Plaintiff's trailer never should have been performed by Defendant. Instead, Defendant should have told Plaintiff that its trailer had been totaled, since the repair costs exceeded 75% of the cash value of the trailer. Even if a new trailer cost of \$50,000 is used as a value metric, the repair costs exceeded this 75% threshold. Alternatively, the value of the repair costs plus the salvage value of the trailer exceeded the fair market value of the used trailer Defendant repaired. Thus, under any metric, repairs never should have been performed.

11. Instead of advising Plaintiff that repairs should not have been performed because the trailer was rendered a total loss, Defendant performed the repairs. This action only served to benefit Defendant since it stood to gain \$42,563.03.

12. In any event, Defendant performed work that never should have been done to repair the trailer, and its invoice represents an excessive and unreasonable charge. Defendant knew this, but proceeded to perform the work and submitted a fraudulent invoice to Plaintiff.

13. The Parties attempted to work out these issues; however, these attempts failed and this lawsuit had to be filed.

## VI. Causes of Action

### A. Declaratory Judgment.

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Pursuant to the TDJA, Plaintiff asks this court to determine whether Defendant

should be paid its excessive invoice. A justiciable controversy of sufficient immediacy and reality exists between Plaintiff and Defendant, warranting this Court's declaration of the Parties' rights, status or other legal relations concerning this disagreement. Plaintiff is further entitled to recover its reasonable and necessary attorney's fees as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

16. In the alternative, if this Court finds that Defendant performed compensable work, then it should determine the amount that Plaintiff should pay Defendant. Plaintiff contends that the invoiced amount is patently unreasonable, given these circumstances (total loss), and that the invoice should be significantly reduced, if not vitiated by Defendant's fraud. For example, the average U.S. welder makes \$50,000/year. This represents a \$25/hour labor cost. Defendant more than tripled this amount by charging Plaintiff \$85/hour. Plaintiff never agreed to this rate in any purchase order (no purchase order is reflected in the invoice), and the rate represents an excessive fee for welding services in Louisiana. Likewise, the materials were substantially overpriced, and Defendant did not include line items for the materials used and cannot reasonably justify these costs.

**B. Claim for Attorney's Fees under TDJA.**

17. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

18. As a result of the need for a judicial declaration of the Parties' here, Plaintiff has been compelled to engage the services of the law firm of O'Conor, Mason & Bone, P.C., licensed attorneys, to represent Plaintiff in this matter, and have further agreed to pay said attorneys a reasonable fee for their services. Plaintiff seeks recovery of its reasonable and necessary attorney's fees and costs incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code.

**C. Claim for Fraud.**

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

**A. The defendant made a representation to the plaintiff.**

20. Defendant, by and through its employees and authorized agents, represented to Plaintiff that its trailer should be repaired.

**B. The representation was material.**

21. Defendant's representation was material to Plaintiff's decision to repair the trailer. However, Defendant knew upon its inspection of the trailer that the anticipated repair costs rendered the trailer a total loss.

**C. The representation was false.**

22. Defendant falsely represented that the trailer should be repaired. It knew that the cost of repair rendered the trailer a total loss.

**D. When the defendant made the representation, the defendant: (a) knew the representation was false, or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth.**

23. Defendant represented that the trailer should be repaired when its visual inspection of the trailer established that it was a total loss. Defendant knew its representation about repair was false or made the representation recklessly, as a positive assertion, and without knowledge that the repairs should not be undertaken.

**E. The defendant made the representation with the intent that the plaintiff act on it.**

24. Defendant made its representation that the trailer should be repaired with the intent that Plaintiff would act on it. Defendant knew that the trailer should not be repaired based upon its visual inspection of it. Plaintiff reasonably thought that Defendant knew how to make these

evaluations and relied upon this representation to repair the trailer. In fact, Defendant hid from Plaintiff that the repairs would only serve Defendant's interests.

**F. The plaintiff relied on the representation.**

25. Plaintiff relied upon Defendant's representation that repairs should be affected to Defendant's trailer.

**G. The representation caused the plaintiff injury.**

26. Defendant caused Plaintiff injury as follows: (1) the repairs never should have been made and Plaintiff received a \$45,999.99 repair cost that it should not have received; (2) Plaintiff pledged the trailer to a creditor that now insists on a return of the trailer, yet Defendant is holding it hostage while it claims, wrongfully, that Plaintiff is indebted to Defendant, resulting in a double liability to Plaintiff on this single trailer; and (3) the costs Defendant billed were patently unreasonable, as described above.

**VII. Conditions Precedent**

27. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, or have been waived.

**VIII. Prayer**

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that, upon final hearing hereof, the Court render final judgment against Defendant, and that Plaintiff be granted the following relief:

- a. A judgment from the Court declaring Plaintiff owes nothing on the disputed invoice; alternatively, that the invoice is unreasonable and finding that reductions are required;
- b. An award of Plaintiff's reasonable and necessary attorneys' fees and expenses incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code;
- c. All damages proximately caused by Defendant's fraud;



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Bobbie Davis  
COUNTY CLERK  
PANOLA COUNTY, TEXAS  
JACKIE McDONALD  
DEPUTY CLERK

7 Page of 34 Pages

JAN 04 2024

- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

**DATED:** November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Conor  
**Robert D. O'Conor**  
State Bar No. 15191250  
**O'CONOR, MASON & BONE, P.C.**  
1616 S. Voss, Suite 200  
Houston, Texas 77057  
Telephone: (713) 647-7511  
Facsimile: (713) 647-7512  
Email: boconor@ombtxlaw.com

**ATTORNEYS FOR PLAINTIFF**

Diamond Construction, Inc.

P.O. Box 7  
 Haynesville, LA 71038  
 (318)846-2641

## Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		7/12/2023			
Quantity	Item Code	Description			Price Each	Amount
261 1	Labor Material	Labor to refurbish crushed aluminum tank Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax			85.00 20,378.03	22,185.00T 20,378.03T
						3,436.96
Thank you for your business!					<b>Total</b>	\$45,999.99

EXHIBIT 1

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 I hereby certify  
 Bobbie Davis  
 COUNTY CLERK  
 PANOLA COUNTY, TEXAS  
 JACKIE McDONALD  
 DEPUTY CLERK

JAN 04 2024



Citation by Certified Mail

**Clerk of the Court:**  
Bobbie Davis, County Clerk  
110 South Sycamore, Room 201  
Carthage, TX 75633

**Attorney or Person Filing Cause:**  
Robert D O'Conor  
1616 S Voss Street Suite 200  
Houston TX 77057

**The State of Texas**  
Citation  
Cause # 3659  
Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.

To: Diamond Construction, Inc.  
Agent: Robert S. Haynes  
27687 Hwy 157  
Shongalo, LA 71072

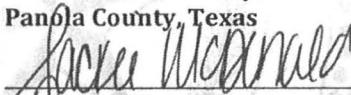
You are hereby commanded to appear by filing a written answer to Plaintiff's Original Petition with the Panola County Clerk at or before 10:00 AM of the Monday next after the expiration of twenty (20) days after the date of service hereof. This case is presently pending in the County Court at Law of Panola County, Texas. A copy of Plaintiff's Original Petition, which was filed December 01, 2023 accompanies this citation.

**Notice to Defendant:** You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM on the Monday next following the expiration of twenty (20) days after the date you were served this Citation and Petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](http://TexasLawHelp.org).

Issued and given under my hand and seal of said Court at office in Carthage, Texas, this the 1st day of December, 2023.



**Bobbie Davis, County Clerk**  
Panola County, Texas

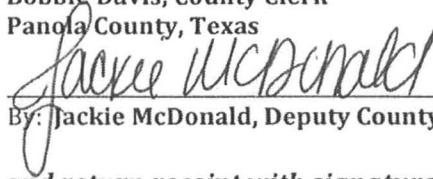
  
By: Jackie McDonald, Deputy County Clerk

**Certificate of Delivery by Certified Mail**

Came to hand on December 01, 2023 at 10 o'clock AM / PM and executed the December 01, 2023, by mailing the same to Diamond Construction, Inc., No Known Mailing Address, by certified mail, return receipt requested, a true copy of this Citation with a copy of the Petition attached thereto.



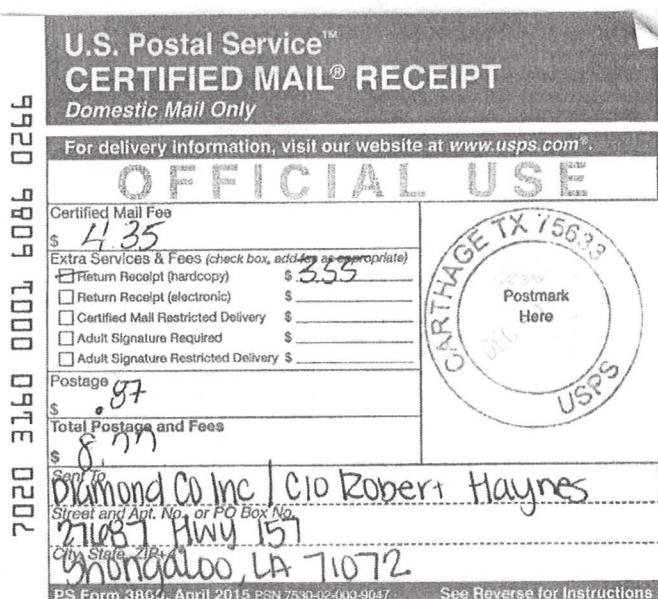
**Bobbie Davis, County Clerk**  
Panola County, Texas

  
By: Jackie McDonald, Deputy County Clerk

*Attach receipt for mail services and return receipt with signature here:*



A TRUE COPY  
I hereby certify  
Bobbie Davis  
COUNTY CLERK



A TRUE COPY

I hereby certify

Bobbie Davis

COUNTY CLERK

PANOLA COUNTY, TEXAS

JACKIE McDONALD

DEPUTY CLERK

11 Page of 34 Pages

JAN 04 2024

**CERTIFIED MAIL**

Bobbie Davis, County Clerk  
Panola County Courthouse  
110 S. Sycamore, Room 201  
Carthage, Texas 75633



7020 3160 0001 6086 0266

SHREVEPORT LA 710 NEOPOST

1 DEC 2023 PM 3 L 12/01/2023

**US POSTAGE \$008.77<sup>0</sup>**

FIRST-CLASS MAIL



ZIP 75633  
041M11297753

Diamond Construction Inc.  
C/O Robert S. Haynes  
27687 HWY 1457  
Shongaloc

FORWARD TIME EXP 1 62216812/02/23  
DIAMOND CONSTRUCTION  
PO BOX 7  
HAYNESVILLE LA 71038-0007

RETURN TO SENDER

INT  
7107563822383

RE: COPY  
RE: certify  
Bobbie Davis  
COUNTY CLERK  
PAMELA MCDONALD  
DEPUTY CLERK

12/01/2023

JAN 04 2024

3659

CAUSE NO. \_\_\_\_\_

**BIGFOOT ENERGY SERVICES, LLC, § IN THE COUNTY COURT**  
§  
Plaintiff, §  
§  
V. § AT LAW  
§  
DIAMOND CONSTRUCTION, INC., §  
§  
Defendant. § PANOLA COUNTY, TEXAS

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13 Page of 34 Pages JACKIE McDONALD  
JAN 04 2024 DEPUTY CLERK

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- c. All damages proximately caused by Defendant's fraud;



- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

**DATED:** November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Conor  
**Robert D. O'Conor**  
State Bar No. 15191250  
**O'CONOR, MASON & BONE, P.C.**  
1616 S. Voss, Suite 200  
Houston, Texas 77057  
Telephone: (713) 647-7511  
Facsimile: (713) 647-7512  
Email: boconor@ombtxlaw.com

**ATTORNEYS FOR PLAINTIFF**



Diamond Construction, Inc.

P.O. Box 7  
 Haynesville, LA 71038  
 (318)846-2641

## Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project		
	Due on receipt		7/12/2023					
Quantity	Item Code	Description			Price Each	Amount		
261 1	Labor Material	Labor to refurbish crushed aluminum tank Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax			85.00 20,378.03	22,185.00T 20,378.03T  3,436.96		
Thank you for your business!								
						<b>Total</b> \$45,999.99		

## EXHIBIT 1

20 Page of 34 Pages  
 JAN 04 2024



A TRUE COPY

I hereby certify

Bobbie Davis

COUNTY CLERK

PANOLA COUNTY, TEXAS

JACKIE McDONALD

DEPUTY CLERK



1616 S. Voss, Suite 200  
Houston, Texas 77057

Telephone: (713) 647-7511  
Facsimile: (713) 647-7512

December 6, 2023

**VIA E-FILE**

Panola County Clerk  
110 S. Sycamore, Room 201  
Carthage, Texas 75633

Re: *Bigfoot Energy Services, LLC v. Diamond Construction, Inc.*; Cause No. 3659, in  
the County Court at Law, Panola County, Texas

Dear Clerk:

We are requesting issuance of a new citation for the defendant, Diamond Construction, Inc. Please issue a citation to be served at the following address:

Diamond Construction, Inc.  
c/o Robert S. Haynes  
P.O. Box 7  
Haynesville, Louisiana 71038

We are also requesting your office to serve the citation by certified mail, return receipt requested. The citation and certified mail fees will be paid upon filing of this request.

Thank you for your assistance. Please contact our office should you have any questions.

Very truly yours,

*Anna C. Ramirez*

Anna C. Ramirez  
*Legal Assistant*

/acr

21 Page of 34 Pages  
JAN 04 2024



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I hereby certify  
Bobbie Davis  
COUNTY CLERK  
PANOLA COUNTY, TEXAS  
JACKIE McDONALD  
DEPUTY CLERK

Citation by Certified Mail

Clerk of the Court:  
Bobbie Davis, County Clerk  
110 South Sycamore, Room 201  
Carthage, TX 75633

Attorney or Person Filing Cause:  
Robert D O'Conor  
1616 S Voss Street Suite 200  
Houston TX 77057

The State of Texas  
Citation  
Cause # 3659  
Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.

To: Diamond Construction, Inc.  
C/O Robert S. Haynes  
P.O. Box 7  
Haynesville, Louisiana 71038

You are hereby commanded to appear by filing a written answer to Plaintiff's Original Petition with the Panola County Clerk at or before 10:00 AM of the Monday next after the expiration of twenty (20) days after the date of service hereof. This case is presently pending in the County Court at Law of Panola County, Texas. A copy of Plaintiff's Original Petition, which was filed December 01, 2023 accompanies this citation.

**Notice to Defendant:** You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM on the Monday next following the expiration of twenty (20) days after the date you were served this Citation and Petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](http://TexasLawHelp.org).

Issued and given under my hand and seal of said Court at office in Carthage, Texas, this the 7th day of December, 2023.



Bobbie Davis, County Clerk  
Panola County, Texas

By: Jackie McDonald, Deputy County Clerk

**Certificate of Delivery by Certified Mail**

Came to hand on December 07, 2023 at \_\_\_\_\_ o'clock AM / PM and executed the December 07, 2023, by mailing the same to Diamond Construction, Inc., No Known Address by certified mail, return receipt requested, a true copy of this Citation with a copy of the Petition attached thereto.



Bobbie Davis, County Clerk  
Panola County, Texas

By: Jackie McDonald, Deputy County Clerk

*Attach receipt for mail services and return receipt with signature here:*



A TRUE COPY

I hereby certify

Bobbie Davis

COUNTY CLERK

PANOLA COUNTY, TEXAS

JACKIE M. DODD

DEPUTY CLERK

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JAN 04 2024

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com).

**OFFICIAL USE**

Certified Mail Fee	
\$ 4.35	
Extra Services & Fees (check box, add \$0.50 if appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ 3.50
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	
\$ .87	
Total Postage and Fees	
\$ 8.77	
Sent To	
Diamond Cang. Inc. c/o Robert Playnes	
Street and Apt. No. or PO Box No.	
PO Box 71038	
City, State ZIP + 4	

PSN 7530-02-000-9047

See Reverse for Instructions

23 Page of 34 Pages

JAN 04 2024



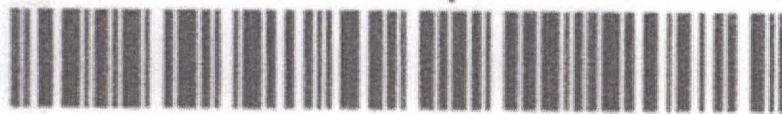
A TRUE COPY  
I hereby certify  
Bobbie Davis  
COUNTY CLERK  
PANOLA COUNTY, TEXAS  
JACKIE McDONALD  
DEPUTY CLERK

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Diamond Construction Inc.  
 C/O Robert S. Haynes  
 P.O. BOX 7  
 Haynesville, ~~TX~~ LA 71038



9590 9402 8057 2349 6089 18

**2. Article Number (Transfer from service label)**

 7020 3160 0001 6086 0150

stricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

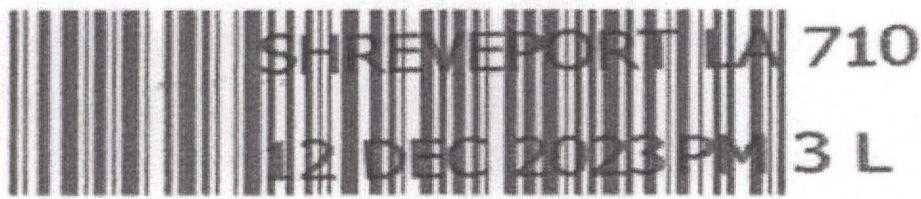
Domestic Return Receipt

 PANOLA COUNTY, TEXAS  
 CLERK  
 ROBERTIE DAVIS  
 MARY C. MCDONALD  
 DEPUTY CLERK
**COMPLETE THIS SECTION ON DELIVERY****A. Signature**
 X *Lei Ware*
 Agent  
 Addressee
**B. Received by (Printed Name)**
**C. Date of Delivery**  
 11/12/2023

**D. Is delivery address different from item 1?**  Yes  
 If YES, enter delivery address below:  No
**3. Service Type**

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- ~~Priority Mail~~
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

USPS TRACKING#



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 8057 2349 6089 18

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box\*

Bobbie Davis, County Clerk  
Panola County Courthouse  
110 South Sycamore, Room 201  
Carthage, Texas 75633



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Bobbie Davis

PANOLA COUNTY CLERK

JACKIE MEDONALD  
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425

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AN 04 2024

3659

CAUSE NO. \_\_\_\_\_

<b>BIGFOOT ENERGY SERVICES, LLC,</b>	§	<b>IN THE COUNTY COURT</b>
<b>Plaintiff,</b>	§	
<b>V.</b>	§	<b>AT LAW</b>
<b>DIAMOND CONSTRUCTION, INC.,</b>	§	
<b>Defendant.</b>	§	<b>PANOLA COUNTY, TEXAS</b>

**PLAINTIFF'S ORIGINAL PETITION  
FOR DECLARATORY JUDGMENT AND FRAUD**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Bigfoot Energy Services, LLC, ("Plaintiff" or "Bigfoot") files this Plaintiff's Original Petition for Declaratory Judgment and Fraud ("Petition") against Diamond Construction, Inc. ("Defendant" or "Diamond") (Plaintiff and Defendant collectively, the "Parties"), and would respectfully show the Court the following:

**I. Summary of This Lawsuit**

1. A real dispute exists about whether Defendant should have engaged in repairs to a trailer in the amount of \$45,999.99 (tax included), or whether the trailer should've been rendered a total loss; as such, Plaintiff files this Declaratory Judgment action. Plaintiff asserts that Defendant never should have performed repairs to Plaintiff's trailer because the trailer should have been rendered a total loss. However, Defendant failed to render the trailer a total loss and decided to repair it to reap a benefit of \$42,563.03 (labor and materials). This lawsuit has been filed to ask this Court to determine whether the Defendant performed unnecessary services to benefit itself at the expense of Plaintiff, and to hold Defendant accountable for its fraud.



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JAN 04 2024

## II. Discovery Control Plan

2. Plaintiff pleads that discovery should be conducted under Level 1, TEX. R. CIV. P. 190.4 and in accordance with a discovery control plan tailored to the circumstances in this suit.

## III. Parties and Service

3. Plaintiff Bigfoot Energy Services, LLC, is a Texas Limited Liability Company with its principal office located in Carthage, Panola County, Texas.

4. Defendant Diamond Construction, Inc., is a Louisiana business corporation, and may be served with process through its registered agent, Robert S. Haynes, 27687 Highway 157, Shongaloo, Louisiana 71072, or wherever he may be found.

## IV. Venue and Jurisdiction

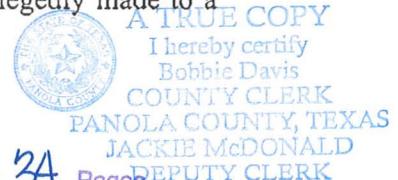
5. This is a suit for declaratory relief, pursuant to the Texas Declaratory Judgment Act ("TDJA"), and fraud concerning an invoice for payment for alleged repair services on a trailer. Venue is proper in Panola County, Texas the Parties' performance concerning these services took place, in whole or in part, in this County.

6. The damages and relief sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of less than \$65,000, inclusive of attorneys' fees.

7. This Court has personal jurisdiction over Defendant because Defendant conducted business in Panola County with a Panola County-based company; Defendant solicited Plaintiff's business in Panola County, Texas; and Defendant committed fraud in Panola County, Texas by submitting an invoice for payment to Plaintiff in this County for services that never should have been performed.

## V. Factual Background

8. As noted in the summary above, this declaratory judgment and fraud action concerns the Parties' dispute about welding and repair services Defendant allegedly made to a



trailer owned by Plaintiff.

9. On July 12, 2023, Defendant submitted Invoice No. 114301 to Bigfoot at its place of business located at 932 South Shelby Road, Carthage, Texas 75633, for repair services allegedly performed on a trailer owned by Plaintiff. The invoice described 261 hours of work, and a total bill of \$45,999.99. See Exhibit 1, attached hereto, the invoice in question.

10. The repair work on Plaintiff's trailer never should have been performed by Defendant. Instead, Defendant should have told Plaintiff that its trailer had been totaled, since the repair costs exceeded 75% of the cash value of the trailer. Even if a new trailer cost of \$50,000 is used as a value metric, the repair costs exceeded this 75% threshold. Alternatively, the value of the repair costs plus the salvage value of the trailer exceeded the fair market value of the used trailer Defendant repaired. Thus, under any metric, repairs never should have been performed.

11. Instead of advising Plaintiff that repairs should not have been performed because the trailer was rendered a total loss, Defendant performed the repairs. This action only served to benefit Defendant since it stood to gain \$42,563.03.

12. In any event, Defendant performed work that never should have been done to repair the trailer, and its invoice represents an excessive and unreasonable charge. Defendant knew this, but proceeded to perform the work and submitted a fraudulent invoice to Plaintiff.

13. The Parties attempted to work out these issues; however, these attempts failed and this lawsuit had to be filed.

## VI. Causes of Action

### A. Declaratory Judgment.

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Pursuant to the TDJA, Plaintiff asks this court to determine whether Defendant

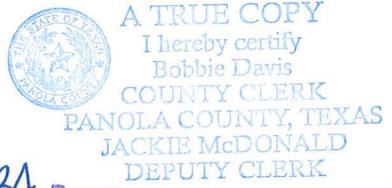
should be paid its excessive invoice. A justiciable controversy of sufficient immediacy and reality exists between Plaintiff and Defendant, warranting this Court's declaration of the Parties' rights, status or other legal relations concerning this disagreement. Plaintiff is further entitled to recover its reasonable and necessary attorney's fees as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

16. In the alternative, if this Court finds that Defendant performed compensable work, then it should determine the amount that Plaintiff should pay Defendant. Plaintiff contends that the invoiced amount is patently unreasonable, given these circumstances (total loss), and that the invoice should be significantly reduced, if not vitiated by Defendant's fraud. For example, the average U.S. welder makes \$50,000/year. This represents a \$25/hour labor cost. Defendant more than tripled this amount by charging Plaintiff \$85/hour. Plaintiff never agreed to this rate in any purchase order (no purchase order is reflected in the invoice), and the rate represents an excessive fee for welding services in Louisiana. Likewise, the materials were substantially overpriced, and Defendant did not include line items for the materials used and cannot reasonably justify these costs.

**B. Claim for Attorney's Fees under TDJA.**

17. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

18. As a result of the need for a judicial declaration of the Parties' here, Plaintiff has been compelled to engage the services of the law firm of O'Conor, Mason & Bone, P.C., licensed attorneys, to represent Plaintiff in this matter, and have further agreed to pay said attorneys a reasonable fee for their services. Plaintiff seeks recovery of its reasonable and necessary attorney's fees and costs incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code.



**C. Claim for Fraud.**

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

**A. The defendant made a representation to the plaintiff.**

20. Defendant, by and through its employees and authorized agents, represented to Plaintiff that its trailer should be repaired.

**B. The representation was material.**

21. Defendant's representation was material to Plaintiff's decision to repair the trailer. However, Defendant knew upon its inspection of the trailer that the anticipated repair costs rendered the trailer a total loss.

**C. The representation was false.**

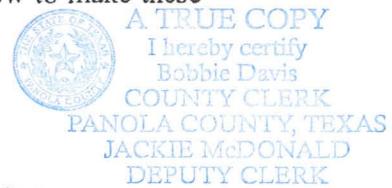
22. Defendant falsely represented that the trailer should be repaired. It knew that the cost of repair rendered the trailer a total loss.

**D. When the defendant made the representation, the defendant: (a) knew the representation was false, or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth.**

23. Defendant represented that the trailer should be repaired when its visual inspection of the trailer established that it was a total loss. Defendant knew its representation about repair was false or made the representation recklessly, as a positive assertion, and without knowledge that the repairs should not be undertaken.

**E. The defendant made the representation with the intent that the plaintiff act on it.**

24. Defendant made its representation that the trailer should be repaired with the intent that Plaintiff would act on it. Defendant knew that the trailer should not be repaired based upon its visual inspection of it. Plaintiff reasonably thought that Defendant knew how to make these



evaluations and relied upon this representation to repair the trailer. In fact, Defendant hid from Plaintiff that the repairs would only serve Defendant's interests.

**F. The plaintiff relied on the representation.**

25. Plaintiff relied upon Defendant's representation that repairs should be affected to Defendant's trailer.

**G. The representation caused the plaintiff injury.**

26. Defendant caused Plaintiff injury as follows: (1) the repairs never should have been made and Plaintiff received a \$45,999.99 repair cost that it should not have received; (2) Plaintiff pledged the trailer to a creditor that now insists on a return of the trailer, yet Defendant is holding it hostage while it claims, wrongfully, that Plaintiff is indebted to Defendant, resulting in a double liability to Plaintiff on this single trailer; and (3) the costs Defendant billed were patently unreasonable, as described above.

**VII. Conditions Precedent**

27. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, or have been waived.

**VIII. Prayer**

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that, upon final hearing hereof, the Court render final judgment against Defendant, and that Plaintiff be granted the following relief:

- a. A judgment from the Court declaring Plaintiff owes nothing on the disputed invoice; alternatively, that the invoice is unreasonable and finding that reductions are required;
- b. An award of Plaintiff's reasonable and necessary attorneys' fees and expenses incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code;
- c. All damages proximately caused by Defendant's fraud;



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- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

**DATED:** November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Conor

**Robert D. O'Conor**  
State Bar No. 15191250  
**O'CONOR, MASON & BONE, P.C.**  
1616 S. Voss, Suite 200  
Houston, Texas 77057  
Telephone: (713) 647-7511  
Facsimile: (713) 647-7512  
Email: boconor@ombtxlaw.com

**ATTORNEYS FOR PLAINTIFF**



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Diamond Construction, Inc.

P.O. Box 7  
 Haynesville, LA 71038  
 (318)846-2641

## Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		7/12/2023			
Quantity	Item Code	Description			Price Each	Amount
261 1	Labor Material	Labor to refurbish crushed aluminum tank Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax			85.00 20,378.03	22,185.00T 20,378.03T  3,436.96
Thank you for your business!						
					<b>Total</b>	\$45,999.99

## EXHIBIT 1

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 JAN 04 2024



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**G.R. (RANDY) AKIN, P.C.  
ATTORNEY - MEDIATOR**

Randy Akin - [GRA@RandyAkin.com](mailto:GRA@RandyAkin.com)

Board Certified

Texas Board of Legal Specialization

Personal Injury Trial Law

American Board of Trial Advocacy

National Board of Trial Advocacy

Civil Trial Advocate

Associate: Gregory Burton - [Greg@RandyAkin.com](mailto:Greg@RandyAkin.com)

Austin Bank Building  
3400 West Marshall Avenue  
Suite 300  
Longview, Texas 75604  
Telephone: (903) 297-8929  
Fax: (903) 297-9046  
[www.RandyAkin.com](http://www.RandyAkin.com)

January 4, 2024

Ms. Bobby Davis  
Panola County County Clerk

Via EFile

Re: Cause No. 3659; Bigfoot Energy Services, LLC v. Diamond Construction, Inc.

Dear Ms. Davis:

Our office is requesting a certified copy of the docket sheet and all filings in the referenced case.

Thank you for your attention to this matter. Should you have any questions or comments, please feel free to contact me.

Sincerely,

*/s/ Brittany Ramthun*

Brittany Ramthun  
Legal Assistant to Gregory Burton  
/br

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I hereby certify  
Bobbie Davis  
COUNTY CLERK  
PANOLA COUNTY, TEXAS  
JACKIE McDONALD  
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JAN 04 2024

### County Clerk's Certificate

The State of Texas

County of Panola

I, Bobbie Davis, County Clerk of Panola County, Texas, do hereby certify that the foregoing instrument(s) filed for record in this office in Cause No. **3659, Bigfoot Energy Services, LLC vs.Diamond Construction, Inc.** are the same as appears from the originals now on file and/or of record in the Probate Minutes of said County and State:

1. Civil Case Summary
2. Plaintiff's Original Petition
3. Citation by Certified Mail – Unexecuted
4. Request for Citation
5. Citation by Certified Mail - Executed
6. Request for Certified Copies

Given under my hand and official seal of office this the 4th day of January, 2024.



By: **Bobbie Davis, County Clerk**  
**Panola County, Texas**

By: **Jackie McDonald, Deputy County Clerk**